

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC 20591

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In the matter of the petition of

INDIANA AVIATION MUSEUM, INC.

for an exemption from §§ 91.315  
and 91.319(a)(2) of Title 14, Code of  
Federal Regulations

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Regulatory Docket No. FAA-2002-11884

DENIAL OF EXEMPTION

By letter dated March 19, 2002, and supplemental information dated September 12, 2002, Ms. Kathleen A. Yodice, Counsel to Indiana Aviation Museum, Inc. (IAM), Law Offices of Yodice Associates, 601 Pennsylvania Avenue NW., Suite 875, Washington, DC 20004, petitioned the Federal Aviation Administration (FAA) on behalf of IAM for an exemption from §§ 91.315 and 91.319(a)(2) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit IAM to operate its Cessna A-37 Attack Jet aircraft (A-37), Chance Vought F4U-5 Corsair aircraft (F4U-5), North American P-51D Mustang aircraft (P-51D), and North American T-28B Trojan aircraft (T-28B), which have been issued limited or experimental airworthiness certificates, to carry passengers on local flights in return for donations.

The petitioner requires relief from the following regulations:

Section 91.315 prescribes that no person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

Section 91.319(a)(2) prescribes that no person may operate an aircraft that has an experimental certificate for carrying persons or property for compensation or hire.

Section 119.5(g) prescribes, in pertinent part, that no person may operate as a direct air carrier or as a commercial operator without an appropriate certificate and appropriate operations specifications.

Section 119.21(a) prescribes, in pertinent part, that each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, must comply with the certification and operations specifications requirements in subpart C of this part.

The petitioner supports its request with the following information:

The petitioner states that IAM was incorporated in Indiana in September 2000 and opened to the public in May 2001. The petitioner also states that the Internal Revenue Service granted IAM § 501(c)(3) status shortly after incorporation. The petitioner states that IAM is dedicated to educating the public by preserving aviation history with static displays in its museum facilities and with hands-on experience in the air. The petitioner adds that IAM's restored historic military aircraft displays include a Beechcraft T-34 Mentor, a P-51D, an F4U-5, a PT-17 Stearman, a T-28B, and a North American AT-6G Texan. The petitioner states that IAM's P-51D has a limited airworthiness certificate and its A-37, F4U-5, and T-28B have experimental airworthiness certificates. The petitioner states that IAM also displays several historic civilian aircraft including a twin-engine Beech Baron 55. The petitioner further states that the IAM staff regularly provides guided tours and informational lectures to its visitors, including school groups and civic youth organizations. The petitioner attaches promotional materials describing the purpose and operations of IAM.

The petitioner states that IAM maintains and operates its seven historic military aircraft at its own significant expense. The petitioner notes that IAM plans to add to its fleet to further ensure the preservation of historic military aircraft and aviation history. The petitioner states that IAM ensures that its aircraft are maintained in compliance with part 91 as it applies to aircraft operated for compensation or hire. The petitioner states that all aircraft receive annual inspections, which historically have occurred within 100 hours of operation. The petitioner contends that IAM's strict restoration and maintenance procedures are costly but required to ensure the safety of the flightcrew and the public.

The petitioner indicates that IAM needs financial support to continue the preservation of its historic military aircraft and its public education pursuits. The petitioner states that the public has demonstrated a willingness to defray some of IAM's costs through donations. The petitioner adds that to show appreciation to donors and provide them with a unique, enjoyable, and educational experience, as well as to attract more donors, IAM seeks to provide local, nonstop flights in exchange for individual financial support. The petitioner contends that granting IAM's petition for exemption would allow IAM to provide donors with the unmatched educational experience of flying in a historic military aircraft. The petitioner further contends that a grant of exemption would allow IAM to better educate the public on the important roles these aircraft

played in U.S. history by attracting greater numbers of donors, thus increasing IAM's ability to preserve an important piece of U.S. and aviation history. The petitioner states that IAM does not seek to compete with 14 CFR part 121 or 14 CFR part 135 certificate holders.

The petitioner states that IAM would like to use its A-37, F4U-5, P-51D, and T-28B to carry passengers on local, nonstop flights in return for donations from sponsors of the museum and its historic military aircraft. The petitioner indicates that experiencing flight in these aircraft offers a unique opportunity to learn about historic aircraft and aviation history. The petitioner contends that this experience is a key attraction of the donor program. The petitioner states that the regulations that prohibit operating aircraft with limited and experimental certificates for compensation or hire limit the source of funds available to maintain IAM's aircraft. The petitioner contends that this restriction also limits the public's opportunity to learn and experience this important part of aviation history. The petitioner argues that IAM requires relief from the regulations to allow the optimum educational opportunities for individuals who wish to experience and learn about historic military jet aircraft in a safe environment. The petitioner contends that a grant of exemption will enhance the public's interest in aviation history and safety.

The petitioner notes that the FAA has granted several exemptions similar to the one IAM requests. The petitioner states that in those exemptions, the FAA found that preserving historic U.S. military aircraft, like preserving historic buildings, landmarks, and neighborhoods, is in the public interest. The petitioner references Exemption Nos. 6540, 6541, and 7126. The petitioner contends, however, that unlike buildings, landmarks, and neighborhoods, riding in a historic military aircraft allows a person to experience what a flight crewmember experienced during the aircraft's heyday. The petitioner adds that only one can imagine what life must have been like without modern conveniences while walking through a historic home. The petitioner contends that when an individual rides in a historic military aircraft, he or she does not need to imagine what a World War I (WWI) or World War II (WWII) fighter pilot experienced.

The petitioner states that the FAA has demonstrated a willingness to allow public participation in the preservation and maintenance of vintage military aircraft. The petitioner contends that allowing operators of historic military aircraft to carry passengers on local flights in return for donations permits operators to defray the costs of restoration, operation, and maintenance while continuing to educate the public on the history of these machines and protect the public interest in the preservation of aviation history.

The petitioner indicates that a grant of exemption is in the public interest. The petitioner states that the FAA has recognized that the promotion, preservation, operation, and maintenance costs of historic military aircraft can reach staggering

proportions. The petitioner states that allowing IAM to provide local flights to its donors would enable IAM to provide the public with an opportunity not only to learn about the roles these aircraft played in U.S. and world history but also to experience that history. The petitioner adds that aviation is one of the few areas of history that allows hands-on experience.

The petitioner states that the public has consistently demonstrated an interest in learning about historic military aircraft and aviation history. The petitioner also states that the public has demonstrated a willingness to aid operators in the upkeep of historic military aircraft. The petitioner states that, in addition to static displays and tours in the museum, IAM has participated in numerous U.S. airshows. The petitioner further states that in 2001, IAM attended more than 30 aviation events and has planned 19 events for 2002. The petitioner attaches IAM's 2001 event list and its 2002 planned event list.

The petitioner indicates that the FAA previously found that without financial support from the public, it is reasonable to conclude that operators of historic military aircraft would not be able to raise enough funds to maintain the aircraft and provide flying experiences to the public. The petitioner references Exemption No. 7126.

The petitioner contends that without the continued financial support of the public, IAM's mission to bring aviation history to life and incite a passion for aviation in the public will not be realized and the public interest will suffer.

The petitioner indicates that an equivalent level of safety would be maintained under a grant of exemption. The petitioner states that a highly experienced team operates IAM's historic military aircraft. The petitioner adds that many of IAM's flight crewmembers are former military pilots or commercial air carrier pilots who have extensive experience in high-performance, historic military aircraft. The petitioner further states that IAM's pilots have more than 58,125 combined hours of demonstrated safe operation of high-performance aircraft and follow strict procedures to ensure the continued safe operation of IAM's aircraft. The petitioner provides short biographies for eight IAM flight crewmembers, which indicate they collectively hold five airline transport pilot certificates, four flight instructor certificates, seven commercial pilot certificates, two airframe and powerplant (A&P) certificates including one with inspection authorization, two ground instructor certificates, two private pilot certificates, one flight engineer certificate, and one repairman certificate.

The petitioner states that IAM has implemented and follows a strict maintenance schedule. The petitioner indicates that IAM's maintenance manuals are identical to the manuals approved and used by the military for each aircraft. The petitioner states that all work is performed in strict compliance with the maintenance manuals. The petitioner indicates that IAM contracts for maintenance and repair from those who specialize in each of its historic military aircraft, ensuring that only the most knowledgeable personnel work on the aircraft. The petitioner adds that IAM maintains

all the aircraft in compliance with subpart E of part 91 as it applies to aircraft operated for compensation or hire. In addition, the petitioner states that IAM has all the aircraft regularly inspected through annual inspections and that the aircraft are thoroughly inspected at least every 100 flight hours and signed off by individuals with inspection authorization. The petitioner provides summaries of the qualifications of three maintenance personnel, all of whom have A&P certificates and two of whom also have inspection authorization.

The petitioner states that it has demonstrated that IAM's pilots are seasoned historic military aircraft pilots. The petitioner further states that it has shown IAM's commitment to safety through the implementation of a quality maintenance program and the employment of highly qualified mechanics. The petitioner adds that the FAA should grant IAM's request for an exemption because of the overriding public interest in providing a comprehensive approach to educating the public about historic military aircraft, preserving an important part of aviation history, and providing the public with an authentic and unmatched experience in historic military aircraft.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent and any delay in acting on this petition would be detrimental to IAM.

The FAA's analysis/summary is as follows:

The FAA has considered the petitioner's supporting information and finds that a grant of exemption is not in the public interest and could adversely affect safety.

Aviation history can be represented in static displays in the same way historic landmarks may be represented in a museum or via live demonstration. The FAA has found a public interest in allowing certain former military aircraft continue to fly to further or maintain U.S. aviation history. However, the FAA finds it must balance that interest with the FAA's primary duty to support the public interest in setting the appropriate aviation safety standards, especially for aircraft operations involving paying passengers. Therefore, the FAA recently re-examined the criteria it would use to determine whether or not to grant exemptions to the operators of vintage military aircraft to allow for the carriage of paying passengers. Specifically, the FAA would evaluate whether (1) a flight in the same or similar aircraft can be performed in full compliance with FAA regulations; (2) there is an overriding public interest in having the aircraft continue to be flown and, therefore, a need to raise funds from a good

source such as paying passengers; (3) measures can be taken to establish an appropriate level of safety for the flights involving paying passengers; and (4) FAA oversight of the operation would not drain scarce FAA inspector resources so as to compromise the public's interest in adequate FAA oversight of other aircraft operations.

The FAA must consider the public interest in preserving "flyable" U.S. aviation history through the use of passenger-paid rides against the public interest in ensuring an appropriate level of safety for those paying passengers. The FAA finds that the proper balance of these public interests will be met and an exemption issued only if the following conditions are met: (1) the aircraft must be a WWII vintage aircraft; (2) the aircraft must be piston-powered; (3) the aircraft must not be altered in terms of seating configuration or capacity from its original design; (4) the aircraft must have been manufactured on or before December 31, 1947; and (5) special training equipment, such as simulators or ejection seat trainers, is not necessary for the flightcrews or the passengers.

Safety is the primary concern behind this decision to limit these exemptions to certain WWII vintage aircraft. WWII vintage aircraft are older, slower-moving aircraft. These features give the flightcrew time to take appropriate corrective actions in the event of an in-flight emergency and to avoid a serious incident. In contrast, jet aircraft move extremely fast, which reduces the margin of error in the event of an in-flight emergency. This circumstance increases the likelihood of the flightcrew and passengers suffering serious injuries or fatalities.

In permitting passenger flights in WWII vintage aircraft, FAA has required flight crewmembers to meet certain qualification and training requirements. These requirements include an FAA-approved training program, maintenance of training records, reporting procedures, and more stringent pilot qualifications. Persons not affiliated with the military may satisfy these training requirements because special training equipment, such as simulators and ejection seat trainers, is not required.

Under FAA Order 8130.2D, Airworthiness Certification of Aircraft and Related Products, aircraft that are issued a special airworthiness certificate in the experimental category for the purpose of exhibition are listed in one of four groups:

(1) group I, performance competition aircraft; (2) group II, turbine-powered aircraft; (3) group III, piston-powered: historic military, vintage, replica, and unique aircraft; or (4) group IV, other aircraft. IAM's A-37 is a group II aircraft, while its P-51D, F4U-5, and T-28B are group III aircraft. The FAA finds that because IAM's A-37 is a group II aircraft it does not meet the above piston-powered requirement and, therefore, IAM's request for an exemption for its A-37 is denied.

The FAA notes that it previously authorized the Commemorative Air Force, formerly the Confederate Air Force, and Planes of Fame Air Museum, to operate a North American P-51 Mustang aircraft, a Chance Vought F4U Corsair aircraft, a Curtiss P-40 Warhawk aircraft, and a Lockheed P-38 Lightning aircraft for compensation under existing grants of exemption. These aircraft were originally designed and manufactured as aircraft for one occupant—the pilot. The FAA finds that because these aircraft were modified from the original manufacturers' design, they can no longer provide the same flight experience as the original, single-seat design. These aircraft may have extensive modifications that may not provide an equivalent level of safety to that of the original design. The FAA notes that the seat modifications may be entirely acceptable for an owner and a passenger who may be an owner's family member or additional crewmember necessary for exhibition or display of the aircraft. However, the FAA finds that such modifications are not suitable for a paying passenger who is not familiar with the aircraft, its systems, and emergency or abnormal procedures requirements.

Therefore, the FAA finds that IAM's request for an exemption for its P-51D and F4U-5, which were originally designed and manufactured as single-seat aircraft, even though modified by an FAA-approved process such as by supplemental type certificate, would not provide an equivalent level of safety and is denied.

The FAA believes that the regulatory scheme adopted in 14 CFR establishes appropriate safety standards for aircraft operators and crewmembers. Therefore, an exemption from aviation safety regulations is not routinely granted if the proposed operation can be performed in full compliance with the rules. Those requesting an exemption from a particular standard or set of standards must demonstrate the following: (1) that the flight cannot be performed in full compliance with FAA regulations, (2) that there is an overriding public interest in conducting passenger flights on the aircraft, and (3) the measures that should be taken to establish an appropriate level of safety for the flight. While the FAA recognizes that the preservation of U.S. WWII aviation history is in the public interest, just as the preservation of historic buildings, historic landmarks, and historic neighborhoods have been determined to be in the public interest, it must ensure the safety of these operations.

Thus, the FAA has adopted the following policy with regard to exemptions from 14 CFR to operate (1) experimental category airplanes certificated under the provisions of § 21.191(d) for exhibition purposes, or (2) limited category airplanes (§ 21.189) for the purpose of carrying persons for compensation on local educational or nostalgia flights. The policy applies to aircraft that have been issued a special airworthiness

certificate, which otherwise are not eligible to be used for the carriage of persons or property for hire. The aircraft that is the subject of the exemption must meet the following criteria:

1. Be a former, U.S. military, WWII or earlier vintage airplane;
2. Be piston-powered;
3. Either be designed as a crew-served airplane or multiple-seat airplane with more than one pilot seat; or
4. Be a replica of the vintage that is so unique as to warrant further consideration; and
5. Have been manufactured on or before December 31, 1947.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition of Indiana Aviation Museum, Inc., for an exemption from 14 CFR §§ 91.315, 91.319(a)(2), 119.5(g), and 119.21(a) is hereby denied.

Issued in Washington, DC, on March 15, 2004.

/s/

John M. Allen

Acting Director, Flight Standards Service